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AN ACT

RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE FOR IN-STATE BUSINESS; CHANGING THE DEFINITIONS OF "RESIDENT BUSINESS" AND "RESIDENT CONTRACTOR"; CHANGING THE PROCESS FOR OBTAINING CERTIFICATION AS A RESIDENT BUSINESS OR RESIDENT CONTRACTOR; ELIMINATING PREFERENCES FOR RESIDENT MANUFACTURERS AND NEW YORK STATE BUSINESSES; PROVIDING PENALTIES; REPEALING SECTION 13-1-21.2 NMSA 1978 (BEING LAWS 1997, CHAPTER 1, SECTION 1 AND LAWS 1997, CHAPTER 2, SECTION 1); DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 13-1-21 NMSA 1978 (being Laws 1979, Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

(1) "business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;

(2) "formal bid process" means a competitive sealed bid process;

(3) "formal request for proposals process" means a competitive sealed proposal process, including a competitive sealed qualifications-based proposal process;

1           (4) "public body" means a department, commission,  
2 council, board, committee, institution, legislative body,  
3 agency, government corporation, educational institution or  
4 official of the executive, legislative or judicial branch of  
5 the government of the state or a political subdivision of the  
6 state and the agencies, instrumentalities and institutions  
7 thereof, including two-year post-secondary educational  
8 institutions, school districts, local school boards and all  
9 municipalities, including home-rule municipalities;

10           (5) "resident business" means a business  
11 that has a valid resident business certificate issued by the  
12 taxation and revenue department pursuant to Section  
13 13-1-22 NMSA 1978; and

14           (6) "recycled content goods" means supplies  
15 and materials composed twenty-five percent or more of  
16 recycled materials; provided that the recycled materials  
17 content meets or exceeds the minimum content standards  
18 required by bid specifications.

19           B. When a public body makes a purchase using a  
20 formal bid process, the public body shall deem a bid  
21 submitted by a resident business to be five percent lower  
22 than the bid actually submitted.

23           C. When a public body makes a purchase using a  
24 formal request for proposals process:

25           (1) five percent of the total weight of all

1 the factors used in evaluating the proposals shall be awarded  
2 to a resident business based on the resident business  
3 possessing a valid resident business certificate; or

4 (2) if the contract is awarded based on a  
5 point-based system, a resident business shall be awarded the  
6 equivalent of five percent of the total possible points to be  
7 awarded based on the resident business possessing a valid  
8 resident business certificate.

9 D. When a joint bid or joint proposal is submitted  
10 by both resident and nonresident businesses, the resident  
11 business preference provided pursuant to Subsection B or C of  
12 this section shall be reduced in proportion to the percentage  
13 of the contract, based on the dollar amount of the goods or  
14 services provided under the contract, that will be performed  
15 by a nonresident business as specified in the joint bid or  
16 proposal.

17 E. When bids are received for both recycled  
18 content goods and nonrecycled content goods, the public body  
19 shall deem the bids submitted for recycled content goods of  
20 equal quality to be five percent lower than the bids actually  
21 submitted. A bid calculation pursuant to this subsection for  
22 a resident business shall not also receive the bid  
23 calculation preference pursuant to Subsection B of this  
24 section.

25 F. The procedures provided in Sections 13-1-172

1 through 13-1-183 NMSA 1978 or in an applicable purchasing  
2 ordinance apply to a protest to a public body concerning the  
3 awarding of a contract in violation of this section.

4 G. This section shall not apply when the  
5 expenditure includes federal funds for a specific purchase."

6 SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969,  
7 Chapter 184, Section 1, as amended) is amended to read:

8 "13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR  
9 CERTIFICATION.--

10 A. To receive a resident business preference  
11 pursuant to Section 13-1-21 NMSA 1978 or a resident  
12 contractor preference pursuant to Section 13-4-2 NMSA 1978, a  
13 business or contractor shall submit with its bid or proposal  
14 a copy of a valid resident business certificate or valid  
15 resident contractor certificate issued by the taxation and  
16 revenue department.

17 B. An application for a resident business  
18 certificate shall include an affidavit from a certified  
19 public accountant setting forth that the business is licensed  
20 to do business in this state and that:

21 (1) the business has paid property taxes or  
22 rent on real property in the state and paid at least one  
23 other tax administered by the state in each of the three  
24 years immediately preceding the submission of the affidavit;

25 (2) if the business is a new business, the

1 owner or majority of owners has paid property taxes or rent  
2 on real property in the state and has paid at least one other  
3 tax administered by the state in each of the three years  
4 immediately preceding the submission of the affidavit and has  
5 not applied for a resident business or resident contractor  
6 certificate pursuant to this section during that time period;

7 (3) if the business is a relocated business,  
8 at least eighty percent of the total personnel of the  
9 business in the year immediately preceding the submission of  
10 the affidavit were residents of the state and that, prior to  
11 the submission of the affidavit, the business either leased  
12 real property for ten years or purchased real property  
13 greater than one hundred thousand dollars (\$100,000) in value  
14 in the state; or

15 (4) if the business is a previously  
16 certified business or was eligible for certification, the  
17 business has changed its name, has reorganized into one or  
18 more different legal entities, was purchased by another legal  
19 entity but operates in the state as substantially the same  
20 commercial enterprise or has merged with a different legal  
21 entity but operates in the state as substantially the same  
22 commercial enterprise.

23 C. An application for a resident contractor  
24 certificate shall include an affidavit from a certified  
25 public accountant setting forth that the contractor is

1 currently licensed as a contractor in this state and that:

2 (1) the contractor has:

3 (a) registered with the state at least  
4 one vehicle; and

5 (b) in each of the five years  
6 immediately preceding the submission of the affidavit: 1)  
7 paid property taxes or rent on real property in the state and  
8 paid at least one other tax administered by the state; and 2)  
9 paid unemployment insurance on at least three full-time  
10 employees who are residents of the state; provided that if a  
11 contractor is a legacy contractor, the requirement of at  
12 least three full-time employees who are residents of the  
13 state is waived;

14 (2) if the contractor is a new contractor,  
15 the owner or majority of owners has paid property taxes or  
16 rent on real property in the state and has paid at least one  
17 other tax administered by the state in each of the five years  
18 immediately preceding the submission of the affidavit and has  
19 not applied for a resident business or resident contractor  
20 certificate pursuant to this section during that time period;

21 (3) if the contractor is a relocated  
22 business, at least eighty percent of the total personnel of  
23 the business in the year immediately preceding the submission  
24 of the affidavit were residents of the state and that, prior  
25 to the submission of the affidavit, the contractor either

1 leased real property for ten years or purchased real property  
2 greater than one hundred thousand dollars (\$100,000) in value  
3 in the state; or

4 (4) if the contractor is a previously  
5 certified contractor or was eligible for certification, the  
6 contractor has changed its name, has reorganized into one or  
7 more different legal entities, was purchased by another legal  
8 entity but operates in the state as substantially the same  
9 enterprise or has merged with a different legal entity but  
10 operates in the state as substantially the same commercial  
11 enterprise.

12 D. The taxation and revenue department shall  
13 prescribe the form and content of the application and  
14 required affidavit. The taxation and revenue department  
15 shall examine the application and affidavit and, if  
16 necessary, may seek additional information to ensure that the  
17 business or contractor is eligible to receive the certificate  
18 pursuant to the provisions of this section. If the taxation  
19 and revenue department determines that an applicant is  
20 eligible, the department shall issue a certificate pursuant  
21 to the provisions of this section. If the taxation and  
22 revenue department determines that the applicant is not  
23 eligible, the department shall issue notification within  
24 thirty days. If no notification is provided by the  
25 department, the certificate is deemed approved. A

1 certificate is valid for three years from the date of its  
2 issuance; provided that if there is a change of ownership of  
3 more than fifty percent, a resident business or resident  
4 contractor shall reapply for a certificate.

5 E. A business or contractor whose application for  
6 a certificate is denied has fifteen days from the date of the  
7 taxation and revenue department's decision to file an  
8 objection with the taxation and revenue department. The  
9 person filing the objection shall submit evidence to support  
10 the objection. The taxation and revenue department shall  
11 review the evidence and issue a decision within fifteen days  
12 of the filing of the objection.

13 F. If, following a hearing and an opportunity to  
14 be heard, the taxation and revenue department finds that a  
15 business or contractor provided false information to the  
16 taxation and revenue department in order to obtain a  
17 certificate or that a business or contractor used a  
18 certificate to obtain a resident business or resident  
19 contractor preference for a bid or proposal and the resident  
20 business or contractor did not perform the percentage of the  
21 contract specified in the bid or proposal, the business or  
22 contractor:

23 (1) is not eligible to receive a certificate  
24 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA  
25 1978 for a period of five years from the date on which the



1 taxation and revenue department became aware of the  
2 submission of the false information or the failure to perform  
3 the contract as specified in the bid or proposal; and

4 (2) is subject to an administrative penalty  
5 of up to fifty thousand dollars (\$50,000) for each violation.

6 G. In a decision issued pursuant to Subsection E  
7 or F of this section, the taxation and revenue department  
8 shall state the reasons for the action taken and inform an  
9 aggrieved business or contractor of the right to judicial  
10 review of the determination pursuant to the provisions of  
11 Section 39-3-1.1 NMSA 1978.

12 H. The taxation and revenue department may assess  
13 a reasonable fee for the issuance of a certificate not to  
14 exceed the actual cost of administering the taxation and  
15 revenue department's duties pursuant to this section.

16 I. The state auditor may audit or review the  
17 issuance or validity of certificates.

18 J. For purposes of this section:

19 (1) "new business" means a person that did  
20 not exist as a business in any form and that has been in  
21 existence for less than three years;

22 (2) "new contractor" means a person that did  
23 not exist as a business in any form and that has been in  
24 existence for less than five years;

25 (3) "legacy contractor" means a construction

1 business that has been licensed in this state for ten  
2 consecutive years; and

3 (4) "relocated business" means a business  
4 that moved eighty percent of its total domestic personnel  
5 from another state to New Mexico in the past five years."

6 SECTION 3. Section 13-1-103 NMSA 1978 (being Laws 1984,  
7 Chapter 65, Section 76, as amended) is amended to read:

8 "13-1-103. INVITATION FOR BIDS.--

9 A. An invitation for bids shall be issued and  
10 shall include the specifications for the services,  
11 construction or items of tangible personal property to be  
12 procured, all contractual terms and conditions applicable to  
13 the procurement, the location where bids are to be received,  
14 the date, time and place of the bid opening and the  
15 requirements for complying with any applicable in-state  
16 preference provisions as provided by law.

17 B. If the procurement is to be by sealed bid  
18 without electronic submission, the invitation for bids shall  
19 include the location where bids are to be received and the  
20 date, time and place of the bid opening.

21 C. If the procurement is to be by sealed bid with  
22 part or all of the bid to be submitted electronically, the  
23 invitation for bids shall comply with the requirements of  
24 Section 13-1-95.1 NMSA 1978."

25 SECTION 4. Section 13-1-112 NMSA 1978 (being Laws 1984,

1 Chapter 65, Section 85, as amended) is amended to read:

2 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR  
3 PROPOSALS.--

4 A. Competitive sealed proposals, including  
5 competitive sealed qualifications-based proposals, shall be  
6 solicited through a request for proposals that shall be  
7 issued and shall include:

8 (1) the specifications for the services or  
9 items of tangible personal property to be procured;

10 (2) all contractual terms and conditions  
11 applicable to the procurement;

12 (3) the form for disclosure of campaign  
13 contributions given by prospective contractors to applicable  
14 public officials pursuant to Section 13-1-191.1 NMSA 1978;

15 (4) the location where proposals are to be  
16 received and the date, time and place where proposals are to  
17 be received and reviewed; and

18 (5) the requirements for complying with any  
19 applicable in-state preference provisions as provided by law.

20 B. A request for proposals may, pursuant to  
21 Section 13-1-95.1 NMSA 1978, require that all or a portion of  
22 a responsive proposal be submitted electronically.

23 C. In the case of requests for competitive  
24 qualifications-based proposals, price shall be determined by  
25 formal negotiations related to scope of work."

1           SECTION 5. Section 13-4-2 NMSA 1978 (being Laws 1984,  
2 Chapter 66, Section 2, as amended) is amended to read:

3           "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF  
4 PREFERENCE.--

5           A. For the purposes of this section:

6                   (1) "formal bid process" means a competitive  
7 sealed bid process;

8                   (2) "formal request for proposals process"  
9 means a competitive sealed proposal process, including a  
10 competitive sealed qualifications-based proposal process;

11                   (3) "public body" means a department,  
12 commission, council, board, committee, institution,  
13 legislative body, agency, government corporation, educational  
14 institution or official of the executive, legislative or  
15 judicial branch of the government of the state or a political  
16 subdivision of the state and the agencies, instrumentalities  
17 and institutions thereof, including two-year post-secondary  
18 educational institutions, school districts, local school  
19 boards and all municipalities, including home-rule  
20 municipalities;

21                   (4) "public works contract" means a contract  
22 for construction, construction management, architectural,  
23 landscape architectural, engineering, surveying or interior  
24 design services; and

25                   (5) "resident contractor" means a person

1 that has a valid resident contractor certificate issued by  
2 the taxation and revenue department pursuant to Section  
3 13-1-22 NMSA 1978.

4 B. For the purpose of awarding a public works  
5 contract using a formal bid process, a public body shall deem  
6 a bid submitted by a resident contractor to be five percent  
7 lower than the bid actually submitted.

8 C. When a public body awards a contract using a  
9 formal request for proposals process:

10 (1) five percent of the total weight of all  
11 the factors used in evaluating the proposals shall be awarded  
12 to a resident contractor based on the resident contractor  
13 possessing a valid resident contractor certificate; or

14 (2) if the contract is awarded based on a  
15 point-based system, a resident contractor shall be awarded  
16 the equivalent of five percent of the total possible points  
17 to be awarded based on the resident contractor possessing a  
18 valid resident contractor certificate.

19 D. When a joint bid or joint proposal is submitted  
20 by both resident and nonresident contractors, the resident  
21 contractor preference provided pursuant to Subsection B or C  
22 of this section shall be reduced in proportion to the  
23 percentage of the contract, based on the dollar amount of the  
24 goods or services provided under the contract, that will be  
25 performed by a nonresident contractor as specified in the

1 joint bid or joint proposal.

2 E. The procedures provided in Sections 13-1-172  
3 through 13-1-183 NMSA 1978 or in an applicable purchasing  
4 ordinance apply to a protest to a public body concerning the  
5 awarding of a contract in violation of this section."

6 **SECTION 6.** Section 13-4-5 NMSA 1978 (being Laws 1933,  
7 Chapter 19, Section 1, as amended by Laws 1997, Chapter 1,  
8 Section 4 and also by Laws 1997, Chapter 2, Section 4) is  
9 amended to read:

10 "13-4-5. USE OF NEW MEXICO MATERIALS.--In all public  
11 works within New Mexico, whether constructed or maintained by  
12 the state or by a department, board or commission of the  
13 state or by any political subdivision of the state, or in any  
14 construction or maintenance to which the state or any  
15 political subdivision of the state has granted aid,  
16 preference shall be given to materials produced, grown,  
17 processed or manufactured in New Mexico by citizens or  
18 residents of New Mexico. In any case where, in the judgment  
19 of the different officers, boards, commissions or other  
20 authorities in this state vested with the power of  
21 contracting for material used in the construction or  
22 maintenance of public works referred to in this section, it  
23 appears that an attempt is being made by producers, growers,  
24 processors or manufacturers in the state to form a trust or  
25 combination of any kind for the purpose of fixing or

1 regulating the price of materials to be used in any public  
2 works to the detriment of or loss to the state, the  
3 provisions of this section shall not apply."

4       **SECTION 7. TEMPORARY PROVISION.**--A certification as a  
5 resident business or resident manufacturer by the general  
6 services department that is in effect prior to passage of  
7 this 2011 act is valid until January 1, 2012 for the purpose  
8 of obtaining a resident business preference pursuant to  
9 Section 13-1-21 NMSA 1978. A certification as a resident  
10 contractor by the general services department that is in  
11 effect prior to passage of this 2011 act is valid until  
12 January 1, 2012 for the purpose of obtaining a resident  
13 contractor preference pursuant to Section 13-4-2 NMSA 1978.  
14 After January 1, 2012, a certification as a resident business  
15 or resident contractor by the taxation and revenue department  
16 for the purpose of obtaining a resident business preference  
17 or a resident contractor preference is required for all new  
18 bids and proposals.

19       **SECTION 8. REPEAL.**--Section 13-1-21.2 NMSA 1978 (being  
20 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,  
21 Section 1) is repealed.

22       **SECTION 9. EMERGENCY.**--It is necessary for the public  
23 peace, health and safety that this act take effect  
24 immediately. \_\_\_\_\_